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Local Control of Education

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Robert O'Reilly

The theory of educational control holds that schools are best served by local boards of education. In practice, however, these local boards are subject to numerous constraints, especially at the state level, and often at the federal level. The social, political, legal and judicial climate has great bearing on what school boards may or may not do, and how they may or may not do it.

In Nebraska, equitable allocation of resources and recognition of the value of local control can help school districts better achieve the state's educational goals.

Local control of education is a concept that has become embedded in American culture. It is generally accepted that decisions about the education of children in a public school district should be made by those who are closest to the site. However, major policy decisions about education are not made at the local level; they are made by legislative bodies, both state and national, and in some instances by state and federal courts.

Local boards of education have long had the responsibility for assignment of students, by grade and location. Still, that authority has been conditional and stipulated by the judiciary as well as federal and state statutes. Boards have control over admission of students to their local schools, but they may not deny admission to handicapped children or assign students by race. Boards have control over hiring and assignment of staff, but they cannot be prejudiced or biased in any of the eight categories of protected citizenship in such board actions. Boards are responsible for fixing the compensation for teachers, but in more than 40 states, statutes demand that boards engage in collective bargaining with faculty. These fluctuations in authority over public education demonstrate how closely state and local authority are interrelated.

Although these functions are responsibilities of local boards, it must be understood that many or most of them are delegated to administrators who function for the board in the actual operation of the schools.

Schools function in an environment influenced by social, political, and legal sectors. But there are ambiguities. Some public school districts

may want or need particular legislation while others may oppose it. Policy that would be most generally beneficial in the state is not always easily discerned. Public education is not a condition of state government vs. local government, although some board members and some legislators may sometimes see it as so.

The Philosophy and Definition of Local Control of Education

The decisions and official actions taken by each local board of education relevant to the operation of the schools under its governance constitute local controls, as differentiated from state or federal controls. The responsibility to provide for free instruction for qualified persons in the common schools of the state is lodged with the legislature, primarily in Article VII of the Nebraska Constitution. As a matter of geographical necessity, the legislature early saw fit to delegate the responsibility for instruction to specialized political subdivisions. Following an already well-established pattern, the public school districts were created by action of the legislature with powers delegated to such agencies as county reorganization committees. For Nebraska's six classes of public school districts, the legislature stated how the governing boards should be elected and how they will proceed in much of the operation of the schools, and it has set forward many of the responsibilities and restrictions for each board.

Although this massive delegation from the state to the local districts occurred, the state legislature has continued to express an interest in the education of the state's citizens. Local control within a school district is subordinate to state control in two ways: its authority is delegated and restricted by the state (and developed from other sources such as the judiciary and the regulations of a state department of education), and its authority is limited to the educational enterprise operated within the public school district.

The delegation of responsibility to local districts by a state does not eliminate state influence. For example, the hiring of teachers has always been a local responsibility, with local governing boards responsible for identifying and hiring competent instructional leaders for appropriate classes within the district. However, only applicants with appropriate certificates issued by the state can be realistic candidates for job openings. Through certification, the state greatly reduces the pool of job candidates, restricting the choice of an employing board.

This particular example of control by the state over authority delegated to the local school board seems to be well received by the boards of education on a shared presumption of heightened quality among job candidates. In a way, it is an initial screening of candidates by the state. No school board association is seeking a roll-back of standards for teacher certificates.

The general public may form even greater restrictions on teacher certification. In the Twentieth Annual Gallup Poll of the Public's Attitude Toward the Public Schools (Gallup and Elam 1988), a resounding 86 percent of those polled favored a national set of standards for the certification of public school teachers. This suggests a structure in which states would forego control over certification, with that power to reside in some federal agency. Such a movement does not seem likely in the foreseeable future, because states are unlikely to voluntarily relinquish power to the federal government, and no existing legal structure would force them to do so.

Addressing topics of general curriculum, the legislature has great power. In such areas as special education, state legislatures are sharply restricted programmatically, having been co-opted by federal statutes and case law, but they may have substantial financial liability, and that not of their own initiative.

In 1988, three states legislated a substantial increase in the state management of local schooling. In New Jersey, statutes empowered the state commissioner of education to "take over" local school districts found to be academically bankrupt by specified criteria for assessment of student achievement (*Education Week* June 1988). In Minnesota, a program allowing students to choose their own schools within or across district boundaries is derived from notions of market response; i.e., consumers will choose schools perceived to be good and their tax support will be changed to that district, so districts will compete for students with improved academic programs. It is anticipated that the program will be fully operating in 1991 (*Education Week* October 1988). Georgia's Quality Basic Education Act (1985) is now up for re-examination by the legislature on its accountability and cost aspects (*Education Week* March 1989). Anxieties about America's future have followed the rush of reports issued in the 1980s calling for reform/improvement, giving rise to a particular message: Let's do something! However, unless managed with reasonable criteria by which to judge proposals, legislation may emerge that is far off the mark for improved education.

There is a positive correlation between the number and complexity of laws and rules in a society, and the number of people in that society who hold varied perceptions and expectations of public service agencies. Given the increasingly complex American culture of the latter 20th century, it is reasonable to expect new controls, such as requiring special education courses for all prospective educators, will be legislatively imposed. American education will continue to experience an increasing number of controlling statutes and regulations.

The Courts' Role

Many issues are settled by court cases. With the expansion of special education following LB 94-142 in 1975, many questions have been brought to the courts for answers. For example, in *Irving Independent School District v. Tatro* (1984), it was determined that public schools must be ready, willing and able to provide related supportive services as one way to increase access to beneficial educational services for handicapped persons. In *Adams Central School District v. Deist* (1983), Nebraska's Supreme Court clarified the obligations of local districts: to provide needed programs or to reimburse parents who sought them elsewhere, when denied locally. Not incidentally, this same issue of responsibility for selected services is now before the United States Supreme Court (*Gilhool v. Muth*, a Pennsylvania case), and the question may be answered in such a way as to substantially enlarge the options for parents who are not pleased with the Individualized Education Plan (IEP) developed by their local school district. The outcome may also raise costs of special education programs.

Recent pronouncements from the Supreme Court have also attended aspects of control over students by school administrators in matters of speech. In *Bethel School District No. 403 v. Fraser* (1986), the court examined freedom of oral speech and identified some restrictions that public school students must accept. In *Hazelwood School District v. Kuhlmeier* (1988), school newspapers were identified as a part of the curriculum, under the control of local board policy. In *Honig v. Doe* (1988), the court clarified the "stay put rule" for special education students guilty of disruptive behavior, diminishing the options for local districts meeting such problems.

The Potential of Local Control

Despite recent limitations on local control, there are many justifications for local control. Control is not absolute; it is a question of the balance of authority between state and local officials. How much control, in what areas, should be delegated by the state to the local boards?

Several purposes are served through implementation of local control. Viewed from the vantage point of organizational theory, it is desirable to put decision-making control close to the action. This presumes, of course, that citizen interest will be high and competent individuals from the local citizens group will be willing to serve on public school governing boards. Through delegation, citizens are allowed to assume ownership through elected boards, PTAs, etc., even though local education is interrelated with state and federal government. Because we tend to be most interested in what is our own, and because citizen interest in the welfare of educational organizations is a large part of their success, the delegation is justified. Distance of state government from the school sites is well beyond what is practical for good administration.

Local control of schools may emerge in newer forms, because a sense of ownership is a powerful motivator toward insistence upon quality. Conversely, when parents and patrons feel alienated from their schools, they evidence low levels of care about what goes on in those schools. Recognizing that social principle, the Illinois legislature passed a bill that would reorganize the Chicago school system (*Education Week* October 1988). Intended to reconstruct the board of education, it will also create local school councils to oversee and advocate for every one of the 594 schools in that system. Other states have similar statutes or regulations, and some federal legislation in the past two decades has stipulated having local school councils as one aspect of eligibility for receiving federal funds.

LB 316 provides another example of the state stipulating how local authority will be exercised. It was enacted in 1988 "to prohibit corporal punishment in public schools; to eliminate a justification for the use of force; to change provisions relating to student discipline. . . (Nebraska Revised Statutes, Sect. 79-1247.02)." Through the enactment of this bill, districts were removed from decision making on the primary question of corporal punishment, but were left with some new problems on how

to provide for every classroom a necessary minimum of control over student behavior.

Discussions on the national scene about what a restructured educational system should look like—in curriculum, facilities and personnel—are not unified, and certainly not tried. Everyone wants better results. State legislators have become uncertain about what they are getting for their money in the educational enterprise, creating an atmosphere of uncertainty, even of distrust. Local school control has been subjected to calls for accountability. It is a politically defensible move, a reflection of constituent dissatisfaction calling for change. However, state standards must be narrow and unambiguous if they are to produce local accountability.

Other factors that should influence state legislators' determination of what authority may be delegated and what withheld include the economic status and prospects for the state; consideration of reports from labor market surveys that indicate a rapid decrease in repetitive, low-skill jobs; and demographic data that describe a third of the student population as having dismal job prospects as adults.

American high schools produce the highest percentage of public school graduates in the world. American schools devote tremendous energy toward both equity and excellence. In the interest of uniformity and economic accountability, they must recognize their interrelationship with state and federal governments. However, consideration and restraint may be the most commendable actions for any state legislature, allowing some time for the assimilation and trial of reform demands just now in place on the local scenes.

Social and Economic Influences on Local Control

Education is interrelated with many social and economic factors. Decisions at all levels must be made in consideration of trends in areas as diverse as population, school district reorganization, property tax equity, and labor relations.

Social Influences. In a late 1988 information release, the Omaha Metropolitan Area Planning Association provided population projections for Douglas and Sarpy counties, which account for about 30 percent of the state's schoolchildren. These data show that in Douglas County the school-age cohort will be substantially larger in 1990 than in 1985; substantially larger in 1995 than in 1990, perhaps even a 16

percent increase; and still a little larger in 2000. From that point, a gentle decrease in school-age children will start, and by 2010 that number will be just slightly higher than the 1980 registrations. In the meantime, a steady increase in the over-60 age group will occur until between 2005-2010, when there will be a surge in growth, perhaps 20 percent in the five years (*Age and Sex Projections to the Year 2010* 1988). This increase in proportion of older citizens will be reflected in each school district's tax base.

Although less pronounced than in Douglas County, the Sarpy County data are quite similar in the pattern of growth and decline, leading to decline of the school-age cohort that will start about 2005 and growth in the over-60 cohort starting just before 2005. Demographic data are a part of the information legislators must use as future plans are made for education.

Economic Influences. The boundaries of public school districts are primarily or exclusively under the jurisdiction of state governance. Nebraska has been slow to require small districts to consolidate. At the time of World War I, Nebraska had well over 7,000 public school districts (O'Reilly and O'Reilly 1980). By 1986 that number had been reduced to 955, but that total was exceeded only by Illinois, California, and Texas. In round figures, Nebraska has 950 public school districts for 1.6 million people; California has 1,000 districts for 22.6 million people. Drawing from those same Department of Education data for neighboring states, it was revealed that Iowa had 436 public school districts; Kansas, 304; South Dakota, 194; Wyoming, 49. And in all states those were unified K-12 districts (*Dateline: Education* March 1987). Legislators control those numbers in that they have the power to redistrict the entire state if they choose to do so.

For local control of education to be exercised in a truly meaningful way, a school district must be a viable entity in terms of both student numbers and financial resources. School district reorganization raises controversy over local control issues. In many instances, while the proponents of a proposed reorganization contend that the merger of existing small school districts into a single, larger unit will result in enhanced educational opportunities at a lower cost per pupil, opponents argue that reorganization would diminish the control residents of each small district have over the education of their children.

An underlying consideration for many is their property taxes; people will often support whatever configuration of school districts results in the lowest tax bill for them. It is possible to devise a state system of school finance that would result in nearly equal assessed valuations and tax rates on similar kinds of property all across the state. If property taxes thus became a moot issue, decisions about school district reorganization could be based on educational considerations rather than on tax advantages, and some of the rather specious arguments about local control could be eliminated.

This fact indicates the reasonableness of such legislation as seen in LB 940, introduced in the Nebraska Unicameral in 1988, whose stated intent is to "change provisions relating to the formation of new (public) school districts." A cursory test for fairness in accepting the financial burden for public education identifies Nebraska as a state in which special interests are still accorded reduced tax obligations, shielded by public school district boundaries. LB 940 provides a plan to attend equity in taxation with the strong prospect of increasing educational quality. The bill is being read for its consequences by Nebraskans who bring different viewpoints to questions of education, including some who will see the goals and intent portions of Section 10 of the bill (Nebraska Revised Statutes, Sect. 79-1247.02) as disadvantageous to their financial welfare. Doubtless, they will speak to legislators, seeking change in that legislation in the direction to continue their preferred financial status. Still, the data and the concepts of financial equity and educational effectiveness indicate the appropriateness of LB 940 as long overdue, and perhaps not forceful enough.

Nebraska has large corporate property owners/users finding relief from local property taxation, under federal statutes from the 1970s. The 4-R Act of the mid-1970s, passed to financially energize the nation's railroads, is now being interpreted as a way to get unattached business property off the property tax rolls. Burlington Northern, Chicago, North Western, and Union Pacific are among companies seeking such relief in the courts. Uniformly successful in their suits, the flow of tax receipts from those companies has been interrupted. At stake is \$378 million in railroad property that currently generates about \$10 million per year in property tax revenue. Some observers in the Nebraska Association of School Boards contend that, combined with the principle of equity embedded in the Nebraska Constitution, many other businesses are likely to be eligible for such relief from property taxes. Combining facts of the

state's economy with current happenings in taxation points up a need for reconsideration of public school district financing, traditionally dependent upon local property taxes (*Newsletter of the Nebraska Association of School Boards* 1989).

In their financing, Nebraska schools have responded to the plethora of civil rights initiatives of the 1960s and 1970s, especially in integrating the due process obligations into the operations of their labor intensive enterprise. The diverse enrollment numbers in Nebraska schools complicates our condition beyond that of many states. Laws and programs suitable in one place may be inappropriate in another. Still, neighboring northern plains states have made progress toward educational program uniformity while also creating equitable property taxation.

Local control may have very different meanings in large and small school districts (as defined by student enrollment) and among rich and poor districts (as defined by assessed valuation per resident student). For example, a large school district tends to provide a broader range of options within which the discretion of the board of education and administration can be exercised. Decisions about what programs and services to offer are seldom made simply to comply with state requirements. In contrast, in very small school systems the programs and services offered may be limited almost exclusively to those required by state approval and accreditation standards. Similarly, options available to rich school districts differ from options of poor school districts. Unless the financial resources are available to support the programs and services that a board of education deems appropriate for its school district, its freedom to exercise the discretion that local control of education implies is of little consequence.

The Nebraska legislature has been responsive to messages from teachers regarding salaries and labor relations. In the sense that permanence in position is based upon procedural due process, Nebraska teachers achieve tenure in their first year of employment (Nebraska Revised Statutes, Sect. 79-2354.02). With teaching an exceptionally low-risk occupation, questions may arise about how high teacher salaries should go. The general rule in labor relations is that high risk merits high pay; low occupational risk (and promised longevity in position) is linked to comparatively lower pay. Still, in 1989 the legislature passed a teacher pay plan (LB 89) that sets aside funds exclusively for teacher salaries. The distribution of that money is left to each individual public school district. The state's history of collective bargaining in

schools covers 20 years. In *School District of Seward Education Association v. School District of Seward* (1972), clarification of management areas was provided. Now, impasses in contract bargaining seem to involve increasingly minute details, and Commission of Industrial Relations awards provide less certainty of direction on how to approach bargaining with confidence of moving toward agreement.

There are, then, some aspects of education that legislators might well avoid, leaving those problems and tasks to the local school districts. Others beg for attention, and they are, typically, difficult questions. On such controversial issues, legislators might do well to limit their considerations to educational quality for Nebraska schoolchildren and equity in taxation for Nebraska citizens.

Legal Context of Local Control

Education is of national interest, a state function, and subject to local control (Hudgins and Vacca 1979). Therefore, the concept of local control of education must be considered within the context of the organization and hierarchy of American law.

In each of the 50 states, there are two distinct but interacting systems of law: that of the federal government and that of the state itself. As stated in the Supremacy Clause in Article VI of the United States Constitution, the supreme law of the land is the Constitution and the laws of the United States enacted pursuant thereof. The enacted and decisional laws of each state must conform to the provisions of federal law. In turn, the regulations and decisions of boards and administrators made at the local school district level must be consistent with the provisions of both federal and state law.

Federal Context

Education *per se* is not among the fundamental rights afforded federal constitutional protection, either explicitly or implicitly. Nevertheless, the Supreme Court has noted that "education is perhaps the most important function of state and local governments," and has distinguished education as being more important than other government benefits because of its impact on both the individual and the whole society (*Plyler v. Doe* 1982).

U.S. Constitution. Through the 10th Amendment of the U.S. Constitution, those powers not delegated to the federal government by the states

are explicitly reserved to the states or to the people. Education is never mentioned in the Constitution; thus it is reserved as a function of state and local government.

Although education itself is not regulated by the U.S. Constitution, various sections of the constitution do impact school boards and school administrators' actions. For example the First Amendment, which protects the freedoms of religion, expression and association; the Fourth Amendment, which protects against unreasonable searches and seizures; the Equal Protection Clause of the 14th Amendment, which provides that a state cannot deny any person within its jurisdiction the equal protection of the laws; and the Due Process Clause of the 14th Amendment—have all been invoked in court cases related to education.

Also through the operation of the 14th Amendment, the Constitution affords private individuals the right to establish parochial and other nonpublic schools; a state cannot require that all children attend public schools (*Pierce v. Society of Sisters* 1925).

A state does have a critical interest in the education of its young people and has the power to impose reasonable regulations regarding the control and duration of basic education and the quality of the education that all schools provide (*Board of Education v. Allen* 1968). One area in which the authority of state and local school officials appears to act independently of federal constraint is in academic matters. The Supreme Court has made it clear that, absent some showing of bad faith, decisions by educators about academic matters are not susceptible to constitutional challenges (*Regents of University of Michigan v. Ewing* 1985; *Board of Curators v. Horowitz* 1978).

U.S. Statutes. Congress has no constitutional authority to directly regulate the governance and administration of public education, but the impact of federal legislation on the local control of education through less direct means is nevertheless substantial. Based on powers delegated by the Constitution, Congress has enacted a broad array of statutes that promote national policies of equal educational opportunities and fair employment practices.

Several major legislative enactments provide for federal financial support for education to those states and local school systems willing to comply with the requirements imposed by these statutes and their implementing regulations. The Education for All Handicapped

Children Act of 1975 provides federal money to assist state and local agencies in educating handicapped children, but conditions such funding on compliance with extensive regulations. As provided by the Civil Rights Restoration Act of 1987, a state or local school system, any part of which is extended federal financial assistance, is prohibited from practicing various forms of discrimination by four separate statutes. Title VI of the Civil Rights Act of 1964 prohibits discrimination on the basis of race, color, or national origin; and Title IX of the Education Amendments of 1972 prohibits discrimination on the basis of sex. Section 504 of the Rehabilitation Act of 1973, as amended, prohibits discrimination against handicapped persons who are otherwise qualified for educational or employment opportunities; and the Age Discrimination Act of 1975 prohibits employment discrimination on the basis of age for those age 40 to 70.

Federal Courts. When disputes arise that involve federal constitutional or statutory law, the federal courts often serve as the forum in which these disputes are resolved. During recent decades, proponents of state and local control of education have contended that the federal courts have been too willing to protect personal rights grounded in federal law, thus diminishing the authority of boards and administrators. The Supreme Court has also been willing to intervene when fundamental constitutional rights are threatened or when the provisions of federal statutes are not followed, but it has generally affirmed the comprehensive authority of state and local governments to control public education.

Nebraska Context

Education is primarily a function of state and local government. The state constitution and statutes are the basic laws that define a state's system of public education. And as the decisions of the Nebraska Supreme Court have made abundantly clear, there is no doubt about the power of the Nebraska Legislature to control the state's educational system, at both the state and local school district levels.

Nebraska Constitution. Article VII, Section 1 of the Constitution of Nebraska states, "The Legislature shall provide for the free instruction in the common schools of this state of all persons between the ages of five and twenty-one years." Sections 2, 3 and 4 provide respectively for

existence of the State Department of Education, the State Board of Education, and the Commissioner of Education.

The Nebraska constitution also recognizes authority greater than that of the Legislature—the power of the people. Article III, Section 2 provides in part that "[t]he first power reserved by the people is the initiative whereby laws may be enacted and constitutional amendments adopted by the people independently of the Legislature. This power may be invoked by petition wherein the proposed measures shall be set forth at length." Section 3 provides for the referendum, "Which may be invoked, by petition, against any act or part of an act of the Legislature, except those making appropriations for the expense of the state government or a state institution existing at the time of the passage of such act."

An illustration of the use of the referendum power to negate a legislative enactment is provided by the history of LB 662. Enacted by the Unicameral in 1985, its major implications were to require some form of reorganization of Class I school districts and to impose a 1 percent sales tax for educational purposes. LB 662 was referred to the voters at the 1986 general election and soundly defeated.

Nebraska Statutes. In contrast to the federal government, which has only that authority delegated to it by the Constitution, a state legislature has the authority to act in regard to any subject it chooses, insofar as its enactments are not inconsistent with federal law or the state constitution (Alexander and Alexander 1985). Pursuant to the mandate of Article VII, Section I of the Nebraska Constitution, the legislature has enacted a comprehensive set of statutes that provide for a state system of public education. In addition to these "education laws," there are numerous other statutes that apply generally to all political subdivisions of state government or to all employer-employee relationships, and some of these general provisions have a substantial effect on local control of public education.

While public education is most subject to state control, the legislature has retained some control over private elementary and secondary schools. Sections 79-1701 *et seq.* set out requirements and authority specific to the operation of all private, denominational, and parochial schools in the state.

The legislative manifestations of the state's education policy can be found throughout the statutes, but two sections are especially worthy

of note. Section 79-4,140.01 is a legislative finding and declaration of the educational mission of the state. It provides that this mission is to be accomplished through the public school system. Section 79-4,140.02 recognizes the importance of education and the intent of the legislature to join with local governing bodies to advance the quality and responsiveness of Nebraska's education system. Its language clearly indicates that the legislature views public education as a state function to be accomplished through a state system of local school districts.

For reasons previously discussed, the legislature has delegated much of the responsibility for implementing state education statutes and supervising the operation of local school systems to the Nebraska Department of Education. The regulations of the state department of education have on occasion been challenged as being an unlawful delegation of legislative authority. The Nebraska Supreme Court noted in *School District No. 39 v. Decker* (1955) that granting administrative discretion is not an unconstitutional delegation of a legislative function in those instances where adequate standards to guide the exercise of such discretion are provided in the authorizing statute. In *School District No. 8 v. State Board of Education* (1964), the court similarly pointed out that the legislature may properly delegate authority to a state agency to formulate rules and regulations to carry out the expressed legislative purpose. There is a difference, however, between a delegation of legislative power and the delegation of authority to an administrative agency to carry out the expressed intent of the legislature. The court concluded that it is almost impossible for a legislature to prescribe all the rules and regulations necessary for a specialized agency to accomplish the legislative purpose, and so the general delegation of authority to an agency to meet the need for complex regulation has been the natural trend.

Section 79-101(11) of the Nebraska Constitution defines a board of education as the governing body of any school district. Sections 79-440, 79-441, 79-443, and 79-444 give each board the authority and the responsibility for the general care and supervision of the schools. The board is to provide facilities and other material necessities; hire administrators, teachers, and other employees; regulate the attendance, promotion, and conduct of pupils; and establish a curriculum consistent with the requirements of the state department of education.

As discussed previously, a board of education has no inherent authority; only that delegated to it by statute. If a board acts beyond the

scope of its authority and is challenged in court, the court will likely hold that the action has no legal force. On the other hand, there have been instances in some states where innovative programs and services initiated and implemented by local school officials were later authorized and regulated by statute (Peterson, Rossmiller and Volz 1978).

The powers granted to local boards of education are quite comprehensive, but they must be exercised within state statutory constraints from all perspectives. Several examples illustrate this. As in all political subdivisions of state government, school board meetings must be conducted pursuant to the Public Meetings statutes, collective bargaining is governed by the Commission of Industrial Relations statutes, and financial affairs are regulated by statutes such as the Nebraska Budget Act. In addition, all public educational institutions are prohibited from discriminating on the basis of sex in any program or activity by the Nebraska Equal Opportunity in Education Act. All public and most private school systems are required by Section 79-328(5) to comply with the State Department of Education rules for approval and accreditation. All school districts must comply with the requirements of the tenure statutes set out in Sections 79-12,107 *et seq.* in instances of dismissals of certificated personnel, and Sections 79-4,170 *et seq.* in matters of student discipline. These examples show the diverse nature of the various state statutes that have a significant impact on local control of education.

Local officials sometimes complain that their authority over staff and students has been eroded by state law. It must be noted, however, that if boards of education and administrators do comply with the statutory procedures, then decisions made at the local level about such matters as staff dismissals and student discipline are likely to be sustained by the Nebraska courts. When standards of performance and rules of conduct are reasonable, the actions of local school officials will probably be upheld. (See, for example, *Eshom v. Board of Education of School District No. 54* 1985; *Brasch v. DePasquale* 1978.)

Nebraska Courts. As the foregoing discussion of constitutional and statutory provisions indicates, the state legislature has comprehensive and pervasive power over the organization and operation of public school districts. The extent of this power has been confirmed in three opinions from the Nebraska Supreme Court.

In *Halstead v. Rozmiarek* (1959), the court stated that "[a] school district is a creature of statute designated a body corporate, possessed of the usual powers of a corporation for public purposes as a convenient agency for exercising the authority that is entrusted to it by the state." The court went on to note that a school district was viewed as a municipal corporation and quoted with approval from a U.S. Supreme Court decision: "Municipal corporations are political subdivisions of the state, created as convenient agencies for exercising such of the governmental powers of the state as may be entrusted to them. . . . The number, nature, and duration of the powers conferred upon these corporations and the territory over which they shall be exercised rests [in] the absolute discretion of the state. . . ."

The power of the state over the very existence of school districts was emphasized in *In Re De Jonge's Petition* (1966). "The State is supreme in the creation and control of school districts and may as it thinks proper, modify or withdraw any of their powers, or destroy such school districts without the consent of the residents thereof, or even over their protests."

The authority of the state over boards of education was pointed out in *School District of Seward Education Association v. School District of Seward* (1972), a case in which the powers of the Commission of Industrial Relations were at issue. The court found, "The Legislature has plenary power and control over school districts, including provision for the appointment or election of governing bodies thereof. Consequently, it may provide limitations on any authority to be exercised by a school board."

The myths and realities of local control, as considered in the context of the legal relationship between state government and local school districts, are summarized by the following:

The large degree of local control of education which prevails in the United States leads many people to assume that local school districts have been granted the right of continued control of education and that the state, by granting substantial control to the local district, has relinquished its authority over the operation of local school districts. There is no factual basis for this assumption. (Peterson, Rossmiller and Volz 1978)

The Future of Local Control

The climate of school operation has become increasingly legalized, a reflection of the willingness of citizens to engage in litigation and the

increasing receptivity of the judiciary. That trend seems likely to continue, for it is in harmony with larger American society. Mandates and restrictions have multiplied, reducing the on-site alternatives open to educators. It may well be that the surge of civil rights legislation that peaked in the 1960s and which powered the moves for extension of rights to individual Americans is on the wane. There are indications that the persons confirmed to federal judiciary positions in the 1980s will be less willing to impose restrictions on governmental units. The political and legal issues of the next decade may evidence conservative approaches.

Contemporary political movements are contradictory when analyzed to determine the future of local control of education. For example, consider the effects of federal legislation that mandated extensions of opportunities for handicapped children and due process for personnel administration, from recruitment to dismissal or retirement. Nebraska has also codified its own mandatory legislation in those areas, but none of that activity has decreased the effort of local boards of education to make decisions regarding special education and personnel. Those efforts have only been channeled in new, specified directions. In fact, some board of education members—and some local school administrators—would contend that such mandates in specific categories have increased their workload. Reasons given include the need for more precise planning of how to carry out intentions in such programs, as well as the demands for accountability that necessitate record keeping and reporting.

Because of this, legislative mandates to school districts may not be automatically implemented. There may be extensive details to attend to. Mandates may reduce degrees of choice on the local scene, but may actually increase the need for an active, thoughtful, and resourceful board of education. The mandated change may be what a local district would do on its own or it may be labeled as intrusive and unwelcome, but change will not decrease the importance of effective local boards of education.

Concluding Observations

As state policymakers consider the balance between state and local control of education, they should keep in mind the state obligation to ensure every child the opportunity to pursue a quality education. Most people would probably concur that the basics of some carefully defined

core curriculum should be studied by all and mastered by most. But while the state meets this obligation, local school districts should still be free to expand their educational agendas to accommodate local needs and preferences. The hand of state control must not be so heavy that it stifles the promise of local creativity.

Proponents of local control sometimes complain about the scope of the power that resides with the state. But in fact, much discretion about how to accomplish the educational mission of the state resides with local boards and administrators. Most truly good ideas in education that are generated at the local level are not killed by the mandates of state control; in general, the state has been supportive of local innovations. Ideas of real merit usually will thrive. The challenge is to generate such ideas and devise a way to implement them at the local level.

Proliferation of statutes and regulations directly limits local control of education. However, there is a less obvious, but quite adverse, effect on governance and administration at the local level that is seldom considered. As the number and complexity of laws increase, boards and administrators must devote an ever greater amount of time and attention to the task of complying with legal requirements. The diversion of financial resources to attorney fees and other costs associated with legal matters is obvious; however, the diversion of professional time and attention from the more important matters of education may be the greater problem.

General Recommendations

The basic responsibility and authority for public education is lodged with the legislature, but the state's educational mission is necessarily accomplished by the local school districts. Striking the proper balance between state and local control is critical. To that end, three general recommendations are offered.

First, the state must meet its responsibility by promulgating rules and standards that ensure quality education for all Nebraska schoolchildren. These rules and standards must be specific enough to be meaningful, yet general enough to accommodate the great variations among Nebraska schools.

Second, the state should continue to pursue the question of school district reorganization. All children in the state must have the opportunity to attend schools that are capable of providing an education appropriate for the 21st century. To support that kind of education

across the state, there must be a more equitable allocation of the financial resources available.

Third, the state should recognize the hardiness and durability of local public school districts as political subdivisions of the state, deserving both guidance through standards and discretion for local implementation. Alone, neither the state nor the local school districts can achieve the state's educational mission; together, they can deliver on the promise of a better future through education.

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